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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/090,672 | 06/04/1998 | SHETSUYOSHI ISHIWATA | 766.21 | 4139 |

5514 7590 10/15/2002
FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

EXAMINER

WOITACH, JOSEPH T

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 1632 | |

DATE MAILED: 10/15/2002

JF

Please find below and/or attached an Office communication concerning this application or proceeding.

Fib

| | | |
|------------------------|-----------------|---|
| Advisory Action | Application No. | Applicant(s) |
| | 09/090,672 | Ishiwata et al. |
| Examiner | Art Unit | |
| Joseph T. Woitach | 1632 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

a) The period for reply expires _____ months from the mailing date of the final rejection.

b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. A Notice of Appeal was filed on Sep 26, 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see NOTE below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: Hybridization conditions were not previously recited, and would require a new search for art and consideration under 35 USC 112, 1st, written description/enablement.

3. Applicant's reply has overcome the following rejection(s):

4. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because:

6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised in the Exhibit A to the affidavit.

7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

The stated or the claim(s), is (s) will be, as follows:

Claim(s) allowed:

Claim(s) 1, 4, 5, 18, 19, and 22

Claim(s) withdrawn from consideration:

8. The proposed drawing correction filed on _____ is a approved or b disapproved by the Examiner.
9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. Other: _____

Deborah Crouch
DEBORAH CROUCH
PRIMARY EXAMINER
GROUP 1000A 1630